Supreme Court, U.S.
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No. 04-794

In The

Supreme Court Of The United States

STATE OF CONNECTICUT,

Petitioner,

v.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED

1. Whether the State of Connecticut, in seeking to proceed as the assignee of ERISA enrollees and requesting relief protecting State citizens from the loss of essential medical care, has alleged an injury sufficient to confer standing pursuant to Article III of the United States Constitution.

2. Whether the ability of a State to litigate as *parens patriae* in matters of grave importance to the health and welfare of State citizens is an aspect of State sovereignty protected by the United States Constitution such that a clear statement of congressional intent must be found before *parens patriae* standing may be foreclosed.

LIST OF PARTIES

In both the United States District Court for the Southern District of Florida, and the United States Court of Appeals for the Eleventh Circuit, the plaintiff was the State of Connecticut.

In both courts below, the defendants were Anthem Blue Cross and Blue Shield of Connecticut; Anthem Health Plans, Inc.; Cigna Healthcare of Connecticut, Inc.; Cigna Health Plans, Inc.; Oxford Health Plans of Connecticut, Inc.; Oxford Health Plans, Inc.; Physicians Health Services of Connecticut, Inc., and Foundation Health Systems, Inc.

TABLE OF CONTENTS

Questions Presented i

List of Parties ii

Table of Authorities iv

Opinions of the Courts Below 1

Jurisdiction 2

Statement of the Case 3

Reasons for Granting the Writ 5

I. Connecticut has an Article III interest in obtaining relief protecting the health and welfare of state residents. 5

A. This Court's decision in *Snapp* establishes that States have an Article III interest in seeing that State residents receive the benefits of federal law. 6

B. ERISA assignees have standing to sue and may assert the "injury in fact" suffered by the assignor 6

II. *Parens Patriae*, a historic power retained by States in our federal system, may not be preempted by Congress without a clear and unmistakable expression of intent 10

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

Alfred L. Snapp & Son v. Puerto Rico,
458 U.S. 592 (1982) 6, 12, 13

Cagle v. Bruner,
112 F.3d 1510 (11th Cir. 1997) 8

City of Hope National Medical Center v. Healthplus, Inc., 156 F.3d 223
(1st Cir. 1998) 7

Cromwell v. Equicor-Equitable HCA Corp.,
944 F. 2d 1272 (6th Cir. 1991) 7

Georgia v. Pennsylvania R. Co., 324 U.S. 439 (1945). . 9

Gregory, et al. v. Ashcroft, 501 U.S. 452 (1991). 11

Hermann Hosp. v. MEBA Med. & Benefits Plan,
845 F. 2d 1286 (5th Cir. 1988) 7

I.V. Services of America, Inc., v. Trustees of the American Consulting Engineers Council Ins. Trust Fund, 136 F.3d 114
(2d Cir. 1998) 7, 11

John Alden et al. v. State of Maine,
527 U.S. 706 (1999) 6, 11

Kennedy v. Connecticut Gen. Life Ins. Co.,
924 F.2d 698 (7th Cir. 1991) 7

Lance Raygor v. Regents of the University of Minnesota, 534 U.S. 533 –
122 S. Ct. 999 (2002). 12

Linda R. S. v. Richard D.,

410 U.S. 614 (1973) 8

Lutheran Medical Center v. Contractors, Laborers, Teamsters and Engineers Health and Welfare Plan, 25 F.3d 616 (8th Cir. 1994) 7

Mackey v. Lanier Collection Agency and Service, Inc., 486 U.S. 825 (1988), ... 6, 7

Maryland v. Louisiana, 451 U.S. 725 (1981) 10

Misic v. Building Serv. Employees Health & Welfare Trust, 789 F.2d 1374 (9th Cir. 1986) 7

Pennsylvania v. West Virginia, 262 U.S. 553 (1923) .. 9

St. Francis Regional Medical Center v. Blue Cross and Blue Shield of Kansas, Inc., 49 F.3d 1460 (10th Cir. 1995) 7

State of Connecticut v. Anthem, et al., 383 F.3d 1258 (11th Cir. 2004). ..... passim

State of Connecticut v. Physicians Health Services of Connecticut, Inc., 103 F.Supp. 2d 495 (D. Conn. 2000) 4

State of Connecticut v. Physicians Health Services of Connecticut, Inc., 287 F.3d 110 (2d Cir. 2002) ..... passim

Vermont Agency of Natural Resources v. United States, ex rel, Jonathan Stevens, 529 U.S. 765 (2000). 6, 8, 10

STATUTES

28 U.S.C. §1254(l) 2

28 U.S.C. § 2102(c) 2

29 U.S.C. § 1002(i) 7

29 U.S.C. § 1002(3) 7

OTHER

Tenth Amendment to the U.S. Constitution 6

In The
Supreme Court of the United States
October Term, 2004

STATE OF CONNECTICUT

Petitioner,

v.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, ET AL.

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

The Petitioner, the State of Connecticut, prays that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS OF THE COURTS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit entered on September 10, 2004 is reported at *State of Connecticut v. Health Net, Inc., f.k.a. Foundation Health, Health Net of Connecticut, Inc., f.k.a. Physicians Health Services of Connecticut, et al.*, 383 F.3d

1258 (11th Cir. 2004), and is printed in the appendix to this petition at App. A-1.

The Order granting defendants' motion to dismiss, issued by the United States District Court for the Southern District of Florida on September 18, 2003 is printed in the appendix to this petition at App. A-9.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered judgment on September 10, 2004. The petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(l). This petition is filed within ninety days of the Court of Appeals' ruling dated September 10, 2004. Supreme Court Rule 13.1 ; 28 U.S.C. 2102(c).

STATEMENT OF THE CASE

This case, originally brought as *State of Conncctlcut v. Anthem, et al.* in the United States District Court in Connecticut, is one of many cases involving the health insurance managed care industry consolidated by the Judicial Panel on Multidistrict Litigation and transferred for pre-trial proceedings to the Southern District of Florida.

The State of Connecticut, by and through the Honorable Richard Blumenthal, Attorney General of the State of Connecticut, brought this action challenging the dangerous and wrongful undisclosed and systemic practices of eight managed care companies that deprive vulnerable enrollees of essential information about their healthcare coverage, subject them to bureaucratic delay, and obstruct their access to medically necessary care. The plaintiff charges that these companies have violated the Employee Retirement Income Security Act of 1974 ("ERISA") by using inappropriate and arbitrary coverage guidelines as the basis of coverage denials; by employing prescription drug "formularies" in a manner that obstructs enrollee access to medically necessary prescription drugs at the same time that the defendants have failed to give enrollees the denial notices, including the notice of the right to appeal, required by ERISA; by failing to make timely payments to providers, thereby threatening enrollees with the loss of necessary care; by failing to respond to enrollee letters and phone calls in a manner that is speedy, coherent, and fair; and by failing to disclose to enrollees essential information about the health insurance plans upon which the enrollees rely, including the true nature of the coverage provided and the steps necessary to submit claims and appeal denials of coverage.

Connecticut brought this action in its capacity as assignee of the individual rights of individual enrollees, and as *parens patriae*. Four enrollees have assigned their ERISA rights to the State of Connecticut.

The action was filed in United States District Court in Connecticut on September 7, 2000. On February 20, 2001, U.S. District Judge Alvin W. Thompson issued an order staying proceedings pending the issuance of an opinion by the United States Court of Appeals for the Second Circuit in *State of Connecticut v. Physicians Health Services of Connecticut, Inc.*, C.A. No. 3:99CV2402 (SRU) ("Connecticut v. PHS")[1]. On April 17, 2001, the Judicial Panel on Multidistrict Litigation, over Connecticut's objection, transferred this case to the Southern District of Florida.

On July 31, 2003, the defendants moved to dismiss this case for lack of standing. The defendants asserted that the district court was controlled in its determination by the ruling of the Second Circuit Court of Appeals in *Connecticut v. PHS,* 287 F.3d 110 (2d. Cir. 2002). The district court agreed, granted the motion to dismiss, and on November 26, 2003, entered judgment in favor of the defendants. Connecticut appealed to the Eleventh Circuit

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[1] *Connecticut v. PHS* was filed on December 14, 1999. The *Complaint* charged that Physicians Health Services of Connecticut, Inc. (now renamed Health Net of Connecticut, Inc.), had violated ERISA by operating a restrictive drug "formulary" in a manner that prevented consumers from receiving medically necessary prescription drugs ordered for them by their physicians. Connecticut asserted its standing as the assignee of the rights of eight PHS enrollees, and as *parens patriae*. On July 13, 2000, the district court granted PHS' motion to dismiss, holding that Connecticut lacked standing. *See, Connecticut v. PHS,* 103 F.Supp 2d. 495 (D.Conn. 2000). The United States Court of Appeals for the Second Circuit affirmed the dismissal on March 27, 2002. *Connecticut v. PHS*, 287 F.3d. 110 (2d. Cir. 2002). Connecticut's *Petition for Certiorari* was denied on October 7, 2002. 123 S. Ct. 77 (2002).

Court of Appeals which, on September 10, 2004, issued an Opinion affirming the judgment of the district court. 383 F.3d 1258 (11th Cir. 2004).

The Eleventh Circuit affirmed the district court's dismissal primarily in reliance upon the earlier decision of the Second Circuit in *Connecticut v. Physicians Health Services of Connecticut, Inc.*, 287 F.3d 110 (2nd Cir. 2002): "We concur with the reasoning of the Second Circuit ... and adopt its reasoning as our own." *Id.* at 1260 The Eleventh Circuit refused Connecticut standing as *parens patriae*, reasoning that "[w]hen a state sues in *parens patriae* to enforce a federal statute, Congress clearly intended that the states be able to bring actions in that capacity ... No such intention can be derived from a plain reading of ERISA." *Id.* at 1262 (citations omitted).

The Eleventh Circuit also ruled that "Connecticut, in its capacity as assignee, has failed to allege an actual or imminent invasion of a legally protected interest that is 'concrete and particularized.' Accordingly, the district court properly concluded that Connecticut, in its capacity or assignee, lacked Article III standing." *Id.* at 1261.

REASONS FOR GRANTING THE WRIT

I. CONNECTICUT HAS AN ARTICLE III INTEREST IN OBTAINING RELIEF PROTECTING THE HEALTH AND WELFARE OF STATE RESIDENTS.

The Eleventh Circuit Court of Appeals ignored prior rulings of this Court, and cast aside Connecticut's historic power to protect its citizens, when it found that Connecticut was without Article III standing as the assignee of ERISA enrollees.

The Eleventh Circuit ruled that "Connecticut, in its capacity as assignee, has failed to allege an actual or imminent invasion of a legally protected interest that is 'concrete and particularized.' Accordingly, the district court properly concluded that Connecticut, in its capacity as assignee, lacked Article III standing." *Connecticut v. Anthem*, 383 F.3d 1258, 1261 (11th Cir. 2004).

A. This Court's decision in *Snapp* establishes that States have an Article III interest in seeing that State residents receive the benefits of federal law.

Even if, for argument's sake only, Connecticut does not have *statutory* standing to maintain a *parens patriae* action under ERISA -- if, *arguendo*, Congress has expressed its unmistakable intention that *parens patriae* should not be available in ERISA cases -- the decision in *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592 (1982) nevertheless establishes that Connecticut has *Article III* standing both as *parens patriae* and as the assignee of enrollees. In fact, Connecticut has two Article III interests: an "interest in the health and well-being -- both physical and economic -- of its residents in general," and an interest in ensuring "that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system." *Id.* at 607-08.

B. ERISA assignees have standing to sue and may assert the "injury in fact" suffered by the assignor.

Connecticut also has Article III standing in this case because Congress intended to permit the assignment of ERISA welfare plan rights, *Mackey v. Lanier Collection Agency and Service, Inc.*, 486 U.S. 825 (1988),

and because ". . . the assignee of a claim has standing to assert the injury in fact suffered by the assignor." *Vermont Agency of Natural Resources v. United States, ex rel, Jonathan Stevens*, 529 U.S. 765, 773 (2000).

In *Mackey*, this court addressed whether ERISA allowed or prohibited the garnishment of benefits under ERISA-regulated welfare plans. The court noted that while Congress prohibited the alienation of benefits under *pension* plans, 29 U.S.C. § 1056(d)(1), Congress did not intend such a ban on the alienation (including assignment) of benefits under *welfare* plans. *Mackey*, 486 U.S. at 837-38.[2/]

The Second Circuit Court of Appeals has ruled that ERISA assignees have standing: "[w]e agree with our sister circuits that, under federal common law, the assignees of beneficiaries to an ERISA-governed insurance plan have standing to sue under ERISA." *I.V. Services of America, Inc. v. Trustees of the American Consulting Engineers Council Ins. Trust Fund*, 136 F. 3d. 114, 117 n.2 (2d Cir. 1998).[3/]

[2/]As defined in 29 U.S.C. § 1002(3), employee benefit plans are of two types: welfare benefit plans provide health, legal, vacation or training benefits, § 1002(1); pension benefit plans provide retirement income, §1002(2). The plans at issue in this case are welfare benefit plans.

[3/]Eight other courts of appeals have also held that ERISA assignees have standing. *Cromwell v. Equicor-Equitable HCA Corp.*, 944 F. 2d 1272, 1277 (6th Cir. 1991); *Kennedy v. Connecticut Gen. Life Ins. Co.*, 924 F. 2d 698, 700 (7th Cir. 1991); *Hermann Hosp. v. MEBA Med. & Benefits Plan*, 845 F. 2d 1286, 1289 (5th Cir. 1988); *Misic v. Building Serv. Employees Health & Welfare Trust*, 789 F.2d 1374, 1379 (9th Cir. 1986); *Lutheran Medical Center v. Contractors, Laborers, Teamsters and Engineers Health and Welfare Plan*, 25 F.3d 616, 619 (8th Cir. 1994); *City of Hope National Medical Center V. Healthplus, Inc.*, 156 F.3d 223, 229 (1st Cir. 1998); *St. Francis Regional Medical*

As we have seen, Connecticut has a historic Article III interest as *parens patriae* that is an important aspect of our federal system. But Connecticut also has an Article III interest in this case because Congress intended that it should. "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute" *Linda R. S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973). In the present case, Congress has determined that assignees may assert the ERISA rights of ERISA enrollees. The invasion of this congressionally-created interest creates the "injury in fact" required by Article III.

Moreover, the Court has held that an assignee may assert the injury in fact suffered by the assignor. In *Vermont Agency of Natural Resources v. United States, ex rel, Jonathan Stevens*, 529 U.S. 765 (2000), plaintiff Stevens brought a *qui tam* action pursuant to the federal False Claims Act against his former employer, the State of Vermont's Agency of Natural Resources, claiming that the Vermont State agency had submitted false claims to the United States Environmental Protection Agency. On appeal, this court considered whether Stevens had standing under Article III to bring the federal action, since he, himself had not been cheated by the State agency. The court held that Article III was satisfied by Stevens' status as the assignee of the claim at issue: "[w]e believe . . . that adequate basis for [Stevens'] suit for his bounty is to be found in the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor. . . . We conclude, therefore, that the United States' injury in fact suffices to confer standing

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Center v. Blue Cross and Blue Shield of Kansas, Inc., 49 F.3d 1460, 1464 (10th Cir. 1995); *Cagle v. Bruner*, 112 F.3d 1510, 1515 (11th Cir. 1997).

on respondent Stevens." Id. at 773-774 (internal citations omitted).

The Court in *Stevens* particularly noted that Mr. Stevens had suffered no invasion of any legally protected right, and therefore ran afoul of traditional Article III standing requirements:

> There is no doubt, . . . that as to this portion of the recovery -- the bounty he will receive if the suit is successful -- a *qui tam* relator has a 'concrete private interest in the outcome of [the] suit.' But the same might be said of someone who has placed a wager upon the outcome. An interest unrelated to injury in fact is insufficient to give a plaintiff standing. The interest must consist of obtaining compensation for, or preventing, the violation of a legally protected right. A *qui tam* relator has suffered no such invasion -- indeed, the 'right' he seeks to vindicate does not even fully materialize until the litigation is completed and the relator prevails. *Id.* at 772-73 (citations omitted).

Although *Stevens* had not personally been injured in any way, this Court determined that he nevertheless had ". . . standing to assert the injury in fact suffered by the assignor." *Stevens*, 529 U.S. at 773. The Court was confirmed in its conclusion because of "the long tradition of *qui tam* actions in England and in the American colonies." *Id.* at 774.

In fact, there is a rich history in our country of suits brought by States in federal court seeking to protect the health and welfare of State citizens. *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); *Georgia v.*

Pennsylvania R. Co., 324 U.S. 439 (1945); *Maryland v. Louisiana*, 451 U.S. 725 (1981).

This court has said that "Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.' " *Vermont v. Stevens*, 529 U.S. at 774 (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102 (1998)). History shows that States have traditionally litigated in federal court to protect their citizens and secure the benefits of the federal system. Like those earlier cases, the present case also involves a case and controversy within the scope of Article III of the Constitution.

II. *PARENS PATRIAE*, A HISTORIC POWER RETAINED BY STATES IN OUR FEDERAL SYSTEM, MAY NOT BE PREEMPTED BY CONGRESS WITHOUT A CLEAR AND UNMISTAKABLE EXPRESSION OF INTENT.

The Second Circuit Court of Appeals decision in *Connecticut v. PHS* whose reasoning was adopted by the Eleventh Circuit in the present case, rejected Connecticut's claim of *parens patriae* standing, reasoning that "[b]ecause States are not mentioned in § 1132(a)(3), Congress -- which carefully drafted [the] provisions of § 1132 -- did not intend for them to have the ability to bring suit pursuant to § 1132(a)(3)." *Connecticut v. PHS*, 287 F.3d 110, 121 (2d Cir. 2002)(internal quotation marks omitted). Thus, the Circuit Court *inferred* congressional intent to foreclose *parens patriae* even though ERISA nowhere refers to *parens patriae*, and even though the Second Circuit itself has ruled that the assignees of beneficiaries to ERISA-governed insurance plans, which are also not mentioned in §1132(a)(3), nevertheless have

standing to sue under ERISA. *I.V. Services of America, Inc., v. Trustees of the American Consulting Engineers Council Ins. Trust Fund*, 136 F.3d 114, 117 n.2 (2d Cir. 1998).

Where an important and traditional State power such as *parens patriae* is involved, however, the State prerogative may be overridden only by a clear statement of congressional intent.

The Constitution created a federal government of limited powers and preserves the sovereign status of the States. States retain a "substantial portion of the nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." *John Alden et al. v. State of Maine*, 527 U.S. 706, 714 (1999). The substantial sovereign authority retained by States in our constitutional system derives in part from the Tenth Amendment to the U.S. Constitution which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Gregory, et al. v. Ashcroft*, 501 U.S. 452, 457 (1991). The powers of the federal and State governments are balanced in a way that reduces the risk of tyranny and abuse. "In the tension between federal and State power lies the promise of liberty." *Id.* at 460. This Court has ruled that congressional action altering this traditional division of power cannot be lightly inferred:

> When "Congress intends to alter [***20] the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear

> in the language of the statute.' " *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65, 105 L. Ed. 2d 45, 109 S. Ct. 2304 (1989) (quoting *Atascadero* [*v. Scanlon*, 473 U.S. 234] at 242). This principle applies when Congress "intends to pre-empt the historic powers of the States" or when it legislates in " 'traditionally sensitive areas' " that " 'affect the federal balance.' " *Will, supra* at 65 (quoting *United States v. Bass*, 404 U.S. 336, 349, 30 L. Ed. 2d 488, 92 S. Ct. 515 (1971)). In such cases, the clear statement principle reflects "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory v. Ashcroft*, 501 U.S. 452, 461, 464, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991).

Lance Raygor v. Regents of the University of Minnesota, 534 U.S. 533, 543-44, 122 S. Ct. 999, 1006 (2002).

The doctrine of *parens patriae* is the type of traditional State power that cannot be curtailed without a clear statement of congressional intent. *Parens patriae* has its roots in the common-law concept of the "royal prerogative" and is now recognized as "inherent in the supreme power of every State. . . ." *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 600 (1982).

In order to maintain an action as *parens patriae*, a State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party. The State must express a quasi-sovereign interest. Id. at 607. Quasi-sovereign State interests generally fall in to two categories:

> First, a State has a quasi-sovereign interest in the health and well-being -- both physical and economic -- of its residents in general. Second, a State has a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system. *Id.* at 607.

This second quasi-sovereign State interest includes the right to invoke federal law to protect State citizens. "... [A] State does have an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." Id. at 608.

The right of States to assert their interest as *parens patriae* is fundamental to the States' participation in the federal system:

> . . .A State is no ordinary litigant. As a sovereign entity, a State is entitled to assess its needs, and decide which concerns of its citizens warrant its protection and intervention. I know of nothing -- except the Constitution or overriding federal law -- that might lead a federal court to superimpose its judgment for that of a State with respect to the substantiality or legitimacy of a State's assertion of sovereign interests. *Id.* at 612, (concurrence of Justice Brennan, joined by Justices Marshall, Blackmun, and Stevens).

Connecticut is a "sovereign entity," *id.*, and has asserted its "sovereign interests," *id.*, by invoking the provisions of ERISA to ensure that its citizens receive the

medically necessary care ordered for them by their attending physicians. Connecticut's decision to assert its status as *parens patriae* in this litigation should not be overridden without a clear statement of Congress' intent to make *parens patriae* unavailable in ERISA cases. States should not lightly be stripped of their historic powers, powers that should in our federal system be accorded deference and respect. This case therefore presents ". . . an important question of federal law that has not been, but should be, settled by this Court. . . ." Supreme Court Rule 10(c). A writ of certiorari should issue to protect States from this dangerous encroachment on their rights under the Constitution.

CONCLUSION

By denying Connecticut *parens patriae* standing without identifying a clear statement of Congressional intent, and by refusing to acknowledge the reality of Connecticut's Article III "injury in fact," the Court of Appeals has failed to recognize the constitutional dimensions of Connecticut's sovereign interest in the health and welfare of its citizens.

For all of the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX TABLE OF CONTENTS

Circuit Court of Appeals Opinion **A-1**

District Court Opinion **A-9**

STATE OF CONNECTICUT, Plaintiff-Appellant, versus HEALTH NET, INC., f.k.a. Foundation Health, HEALTH NET OF CONNECTICUT, INC., f.k.a. Physicians Health Services of Connecticut, Inc., et al., Defendants-Appellees.

No. 03-16287

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

383 F.3d 1258; 2004 U.S. App. LEXIS 19313; 33 Employee Benefits Cas. (BNA) 1865

September 10, 2004, Decided
September 10, 2004, Filed

OPINION: [*1259] LAND, District Judge:

This appeal presents an issue of first impression in this Circuit: whether a state, after obtaining assignments from some of its citizens for claims that those citizens have under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (ERISA), has standing to assert those claims on behalf of its citizens in federal court. We conclude that Appellant, the State of Connecticut ("Connecticut"), in its capacity as assignee, has failed to demonstrate that it has suffered or will suffer an actual or imminent invasion of a legally protected interest that is concrete and particularized. Therefore, Connecticut does not have standing to pursue its claims, as an assignee, under Article III of the United States Constitution. We also hold that Connecticut does not have statutory standing under ERISA to pursue the claims of its citizens in its capacity as *parens patriae*. Accordingly, we affirm the judgment of the

district court dismissing Connecticut's Complaint.

BACKGROUND

Connecticut, on behalf of its citizens, sued eight managed health care companies alleging violations of ERISA. Specifically, Connecticut contends **[**3]** that the companies violated ERISA by using inappropriate and arbitrary guidelines as the basis of **[*1260]** coverage denials; by employing prescription drug formularies in a manner that obstructs enrollee access to medically necessary prescription drugs; by failing to make timely payments to providers; by failing to respond to enrollee letters and phone calls; and by failing to disclose to enrollees essential information about the health insurance plans upon which the enrollees rely. Prior to filing suit, Connecticut obtained assignments from four of its citizens who were enrollees in the managed care companies' ERISA plans. Connecticut brings the present action in its capacity as assignee of the individual rights of these four enrollees and in its capacity as *parens patriae.* The district court dismissed Connecticut's Complaint for lack of standing and alternatively for lack of prosecution. n1

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 In addition to finding a lack of standing, the district court found that Connecticut's failure to attend a docket call authorized dismissal for failure to prosecute. Connecticut contends it never received notice of the docket call.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[**4]**

Prior to filing the lawsuit giving rise to the present appeal, Connecticut filed a separate lawsuit against a managed care

company claiming that its handling of certain prescription drug claims violated ERISA. Although the claims were slightly different and only one managed health care company was involved, Connecticut asserted the same bases for standing in that lawsuit as in the present one--as an assignee of its citizens' ERISA rights and as *parens patriae*. In the previous case, the United States District Court for the District of Connecticut dismissed Connecticut's lawsuit, finding that Connecticut lacked standing to pursue its claims. *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 103 F. Supp. 2d 495 (D. Conn. 2000). Connecticut appealed that decision. While its appeal was pending in the Second Circuit, Connecticut filed in the Connecticut district court the lawsuit that is the subject of the present appeal to this Court. The Connecticut district court stayed the proceedings in the present action pending the Second Circuit Court of Appeals' resolution of the appeal in the previous action.

While Connecticut's appeal to the Second Circuit remained **[**5]** pending, the Judicial Panel on Multidistrict Litigation transferred this case to the United States District Court for the Southern District of Florida for coordinated pretrial management in the pending multidistrict litigation against various health management companies. *See In re Managed Care Litigation*, No. 00-1334-MD (S.D. Fla. filed Apr. 17, 2000). Subsequent to the transfer of this case to multi-district litigation, the Second Circuit affirmed the Connecticut district court's determination in the previous case, finding that Connecticut lacked standing to bring suit under ERISA either as an assignee or in *parens patriae*. *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110, 115-21 (2d Cir. 2002), *cert. denied*, 537 U.S. 878, 154 L. Ed. 2d 133 (2002) (herein referred to as PHS). Relying in part upon the Second Circuit's decision, the Southern District of Florida subsequently dismissed the present case for lack of standing and lack of prosecution.

Connecticut now appeals that dismissal. We concur with the reasoning of the Second Circuit in *Connecticut v. Physicians Health Services of Connecticut, Inc.*, 287 F.3d 110, **[**6]** and adopt its reasoning as our own. Accordingly, we affirm the district court's dismissal of Connecticut's Complaint for lack of standing.

DISCUSSION

The district court's dismissal of Connecticut's Complaint for lack of standing is reviewed *de novo*. *Freeman v. First Union Nat'l*, 329 F.3d 1231, 1234 (11th Cir. 2003).

[*1261] *I. The State's Standing as Assignee*

Four Connecticut residents assigned their rights under ERISA to the State of Connecticut. However, no evidence exists in the record to suggest that this assignment was supported by any consideration or that the State of Connecticut has suffered, or will suffer, any type of injury as a result of the practices it claims violate ERISA. It simply seeks to assert these claims on behalf of its citizens and for their sole benefit.

HN1 It is axiomatic that the jurisdiction of the federal courts is limited by the United States Constitution. Specifically, Article III, Section 2, of the Constitution restricts federal courts to deciding "Cases" and "Controversies." U.S. Const. art. III, § 2. The doctrine of constitutional standing has emerged from the Supreme Court's interpretation of the meaning of these two terms-- "Cases" **[**7]** and "Controversies." "Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue." *Sierra Club v. Morton*, 405 U.S. 727, 731-32, 92 S. Ct. 1361, 1364, 31 L. Ed. 2d 636 (1972).

HN2 At an "irreducible constitutional minimum," Article III standing requires that the plaintiff "must have suffered an injury in fact--an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992) (internal quotation marks, citations, and footnote omitted). Generally, the plaintiff "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct. 2197, 2205, 45 L. Ed. 2d 343 (1975).

In the present appeal, Connecticut does not contend that it has suffered any specific injury to itself. The assignments in this case are virtually **[**8]** identical to those at issue in PHS; they do not "confer actual rights or benefits under ERISA on the State ... The right to recover benefits or to seek money damages remains with the assignors." Conn. v. Physicians Health Servs. of Conn., Inc., 287 F.3d at 115. For the reasons set out in Part II of the Second Circuit opinion in Conn. v. Physicians Health Servs. of Conn., Inc., 287 F.3d at 115-19, we hold in this case that Connecticut, in its capacity as assignee, has failed to allege an actual or imminent invasion of a legally protected interest that is "concrete and particularized." n2 Accordingly, the district court properly concluded that Connecticut, in its capacity as assignee, lacked Article III standing.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n2 The facts giving rise to the present appeal are distinguishable from those cases in which this Court has recognized the standing of certain health care provider-assignees who assert ERISA claims under 29 U.S.C. §

1132(a). Unlike Connecticut, the provider-assignees in those cases were able to assert separate injuries sufficient to satisfy the requirements for Article III standing. *See HCA Health Servs. of Ga., Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001) (recognizing standing of health care provider-assignee to sue for recovery of benefits where assignments were not prohibited under the plan in question); *Cagle v. Bruner*, 112 F.3d 1510, 1514-15 (11th Cir. 1997) (per curiam) (same).

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[9]**

II. The State's Claims as Parens Patriae

Connecticut also contends that it has standing to bring claims for violation of ERISA in its *parens patriae* capacity. HN3 *Parens patriae* is a common law doctrine that permits states to sue under certain limited circumstances to enforce what the Supreme Court has called "quasi sovereign" interests. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 603-04, 102 S. Ct. 3260, 3266-67, 73 L. Ed. 2d 995, 1005-06 (1982).

[*1262] Like the Second Circuit, we decline to address the issue of Article III *parens patriae* standing, see Conn. v. Physicians Health Servs. of Conn., Inc., 287 F.3d at 119-20, because we hold that Connecticut lacks statutory standing to sue in *parens patriae* to enforce the alleged ERISA violations in this case. HN4 When a state sues in *parens patriae* to enforce a federal statute, it must demonstrate that, in enacting the statute, Congress clearly intended that the states be able to bring actions in that capacity. *See Hawaii v. Standard Oil Co.*, 405 U.S. 251, 260-66, 92 S. Ct. 885, 890-93, 31 L. Ed. 2d 184, 191-95

(1972). No such intention can be derived from a plain reading of ERISA. The **[**10]** specific section upon which Connecticut relies, Section 502(a)(3) of ERISA, provides that only "a participant, beneficiary or fiduciary" may bring suit. 29 U.S.C. § 1132(a)(3). Nothing in this statutory provision suggests that a state may bring lawsuits on behalf of its citizens to enforce ERISA. In fact, the plain language of the statute supports the conclusion that Congress had no such intention. Accordingly, following the Second Circuit in PHS, see 287 F.3d at 120-22, we find that Connecticut lacks statutory standing to proceed in *parens patriae*. n3

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n3 Connecticut attempts to bootstrap its assignment argument with its *parens patriae* claim, contending that by permitting assignment of ERISA claims under certain circumstances Congress has evidenced its intent to permit states to proceed *parens patriae* upon obtaining assignments from its citizens. The Court rejects this contention, finding that if Congress truly intended for the states to be able to proceed *parens patriae* to enforce ERISA it could have plainly said so.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[**11]**

CONCLUSION

Based on the foregoing, the judgment of the district court is AFFIRMED. n4

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n4 In light of our conclusion that Connecticut lacks

standing to pursue its claims, we find it unnecessary to determine whether its Complaint should also be dismissed for lack of prosecution or based upon principles of *res judicata* and collateral estoppel.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

MDL NO. 1334
Master File No. 00-1334-MD-MORENO

IN RE: MANAGED CARE LITIGATION

THIS DOCUMENT RELATES TO
SUBSCRIBER TRACK CASES

THE STATE OF CONNECTICUT,

Plaintiff,

vs.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, et al.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS MATTER came before the Court upon Defendant's Motion to Dismiss **(D.E. No. 2201),** filed on **July 31, 2003.**

THE COURT has considered the motion , the response and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is GRANTED for lack of prosecution as Plaintiff failed to appear at Calendar Call. It is also

ADJUDGED that the case is hereby **DISMISSED** for Plaintiff's lack of standing consistent with *Connecticut v. Physicians Health Servs. Of Conn., Inc.*, 287 F.3d 110 (2d Cir. 2002), cert. denied, 537 U.S. 878 (2002).

DONE AND ORDERED in Chambers at Miami, Florida, this 18th day of September, 2003.

(Signed) _____
FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

(2)

No. 04-794

Supreme Court, U.S.
FILED
JAN 12 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STATE OF CONNECTICUT,

Petitioner,

v.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTION PRESENTED

In 2002, petitioner the State of Connecticut sought a writ of certiorari to the Second Circuit in a case presenting two issues: [1] whether the State had standing to sue under ERISA as an "assignee" of some of its citizens' ERISA rights; and [2] whether the State had standing to sue to enforce ERISA in its *parens patriae* capacity. This Court denied certiorari.

In 2004, the Eleventh Circuit decided an appeal involving the same petitioner and the same two issues, expressly adopting and relying upon the Second Circuit's reasoning.

The question presented is whether this Court—having previously denied certiorari on the same issues and with nothing having changed in the interim—should grant certiorari to review the Eleventh Circuit's decision.

RULE 29.6 STATEMENT

The legal name of respondent Anthem Blue Cross and Blue Shield of Connecticut is Anthem Health Plans, Inc. Respondent Anthem Health Plans, Inc. is a wholly owned subsidiary of Anthem East, Inc., which is a wholly owned subsidiary of Anthem Insurance Companies, Inc., which is a wholly owned subsidiary of WellPoint, Inc. No publicly held company owns 10% or more of respondent Anthem Health Plans, Inc.'s stock.

Respondent CIGNA HealthCare of Connecticut, Inc. is a direct, wholly owned subsidiary of Healthsource, Inc., which is a direct, wholly owned subsidiary of CIGNA Health Corporation, which is a direct, wholly owned subsidiary of Connecticut General Corporation, which is a direct, wholly owned subsidiary of CIGNA Holdings, Inc., which is a direct, wholly owned subsidiary of CIGNA Corporation. The shares of stock of CIGNA HealthCare of Connecticut, Inc. are not publicly held, and no publicly held company owns 10% or more of CIGNA Corporation's common stock.

Respondent Health Net, Inc., formerly known as Foundation Health Systems, Inc., is a publicly held corporation. It has no parent corporation. The one publicly held company owning 10% or more of the outstanding shares of Health Net, Inc.'s common stock is Legg Mason Funds Management, Inc. and related entities. Respondent Health Net of Connecticut, Inc. is a wholly owned subsidiary of Health Net of the Northeast, Inc., which in turn is a wholly owned subsidi-

ary of respondent Health Net, Inc. No publicly held company owns 10% or more of Health Net of Connecticut, Inc.'s common stock.

Respondent Oxford Health Plans of Connecticut, Inc. is a wholly owned subsidiary of respondent Oxford Health Plans, Inc. (now Oxford Health Plans LLC), which in turn is a wholly owned subsidiary of UnitedHealth Group, Inc. Oxford Health Plans of Connecticut, Inc.'s shares of stock are not publicly held, Oxford Health Plans LLC does not have any shares of stock, and no publicly held company owns 10% or more of UnitedHealth Group, Inc.'s common stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES vi

COUNTERSTATEMENT 2

REASONS FOR DENYING THE WRIT 6

I. THERE IS NO CONFLICT IN THE LAW OF ASSIGNEE STANDING. 6

II. THERE IS NO CONFLICT IN THE LAW OF STATUTORY STANDING UNDER ERISA. 8

III. THE ATTORNEY GENERAL LACKS STATE AUTHORITY TO SUE 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page

CASES:

Aetna Health Inc. v. *Davila*, 124 S. Ct. 2488 (2004) 8

Alfred L. Snapp & Son v. *Puerto Rico*, 458 U.S. 592 (1982) 8

Blumenthal v. *Barnes*, 261 Conn. 434, 804 A.2d 152 (2002) 10

Connecticut v. *Physicians Health Servs. of Conn., Inc.*, 103 F. Supp. 2d 495 (D. Conn. 2000) 2

Connecticut v. *Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110 (2d Cir.), *cert. denied*, 537 U.S. 878 (2002) 2, 3, 7, 9

Franchise Tax Bd. v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) 9

Harris Trust & Sav. Bank v. *Salomon Smith Barney, Inc.*, 530 U.S. 238 (2000) 9

Hawaii v. *Standard Oil Co.*, 405 U.S. 251 (1972) 3, 9

In re Managed Care Litig., No. 00-1334-MD (S.D. Fla. filed April 17, 2000) 5

Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992) 6, 7

TABLE OF AUTHORITIES—Continued

	Page
Vermont Agency of Natural Res. v. *United States ex rel. Stevens*, 529 U.S. 765 (2000)	3, 7
CONSTITUTION:	
U. S. Const. art. III	*passim*
STATUTES:	
29 U.S.C. § 1001 *et seq.*	2
29 U.S.C. § 1132(a)(3)	2, 3
29 U.S.C. § 1132(a)(7)	3
Conn. Gen. Stat. § 3-129c	10
RULES:	
S. Ct. Rule 10	5

IN THE

Supreme Court of the United States

No. 04-794

STATE OF CONNECTICUT,

Petitioner,

v.

ANTHEM BLUE CROSS AND BLUE SHIELD OF CONNECTICUT, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

Respondents respectfully request that the Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

INTRODUCTION

This is the State of Connecticut's second petition for certiorari on *identical* issues—in fact, the State's petition is largely a verbatim copy of its first unsuccessful petition for review. In the prior case, the Connecticut federal district court dismissed the State's ERISA claims for lack of standing. The Second Circuit affirmed, the State sought certiorari, and this Court denied review. In this case—originally filed in

Connecticut federal district court but transferred to Florida—the district court dismissed Connecticut's ERISA claims for lack of standing. The Eleventh Circuit affirmed in an opinion that expressly adopted the Second Circuit's reasoning.

The State again seeks certiorari, this time from the Eleventh Circuit's decision. There is almost literally no difference between this petition and the one seeking review of the Second Circuit's earlier decision, and nothing has changed in the interim. This petition should likewise be denied.

COUNTERSTATEMENT

Eight judges from four federal courts in two circuits have held that the State of Connecticut lacks standing to sue under ERISA Section 502(a)(3) either as a putative assignee or in *parens patriae*. Because the Eleventh Circuit expressly adopted and relied upon the earlier decision of the Second Circuit, the factual and procedural background of both cases warrants detailed treatment.

The First Case. In December 1999, the Attorney General of Connecticut sued respondent Health Net of Connecticut, Inc.—then doing business as Physicians Health Services of Connecticut, Inc. ("PHS")—in the United States District Court for the District of Connecticut, claiming that Health Net had violated ERISA, 29 U.S.C. § 1001 *et seq*. The State alleged that it had standing to sue under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), as an "assignee" of a few Connecticut residents, as well as in its *parens patriae* capacity. Concluding that the State lacked standing to sue to enforce ERISA under either theory, the district court dismissed the Attorney General's suit. *Connecticut* v. *Physicians Health Servs. of Conn., Inc.*, 103 F. Supp. 2d 495, 497 (D. Conn. 2000).

The Second Circuit affirmed. *Connecticut* v. *Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110 (2d Cir.), *cert. denied*, 537 U.S. 878 (2002) ("*PHS*"). As the Second Circuit

explained, the State purported to be the assignee of plan beneficiaries' claims for equitable relief. But that relief—as Connecticut's Attorney General readily conceded—would not "flow to the State as assignee," but instead would flow only to plan beneficiaries. *Id.* at 118. The State therefore lacked any " 'concrete private interest in the outcome of [the] suit,' " having suffered no injury sufficient to confer Article III standing. *Id.* at 118 (*quoting Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765, 772 (2000)).

The Second Circuit also rejected the State's claim that it had standing to sue to enforce ERISA in its capacity as *parens patriae*. *PHS*, 287 F.3d at 119-122. The court explained that a state's *parens patriae* standing to sue for violations of a federal statute depends on whether "Congress intended to allow for such standing." *Id.* at 120 (citing *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 260-266 (1972)). ERISA confers authority on states to sue in a limited set of circumstances; for example, Section 503(a)(7) specifies that a state may act as a plaintiff to "enforce qualified medical child-support orders." *PHS*, 287 F.3d at 121 (citing 29 U.S.C. § 1132(a)(7)). But Section 502(a)(3)—the operative section in *PHS* and in this case—limits those plaintiffs who may bring civil actions for equitable or injunctive relief to plan "participant[s], beneficiar[ies], or fiduciar[ies]." 29 U.S.C. § 1132(a)(3); *see PHS*, 287 F.3d at 121. The State in its *parens patriae* capacity is none of these. Because Section 502(a)(3) "carefully limits the parties who may seek relief" and makes no provision for a state to sue in *parens patriae*, the Second Circuit concluded that Connecticut could not sue in *parens patriae* to enforce ERISA. *PHS*, 287 F.3d at 121.

The Attorney General subsequently petitioned this Court for a writ of certiorari. Petition for Writ of Certiorari, *Connecticut* v. *Physicians Health Services of Connecticut*, *cert. denied* 537 U.S. 878 (2002) (No. 02-02) ("2002 Pet.").

The Questions Presented in that petition were identical to the Questions Presented in this one:

> 1. Whether the ability of a State to litigate as *parens patriae* in matters of grave importance to the health and welfare of State citizens is an aspect of State sovereignty protected by the United States Constitution such that a clear statement of congressional intent must be found before *parens patriae* standing may be foreclosed.
>
> 2. Whether the State of Connecticut, in seeking to proceed as the assignee of ERISA enrollees and requesting relief protecting State citizens from the loss of essential medical care, has alleged an injury sufficient to confer standing pursuant to Article III of the United States Constitution.

2002 Pet. i; *compare* 2004 Pet. i (same questions in reverse order). This Court denied the petition on October 7, 2002. 537 U.S. 878 (2002).

The Second Case. While Connecticut's appeal was still pending in the Second Circuit, the State obtained four additional ERISA "assignments" and filed a second lawsuit in Connecticut federal district court, claiming—as before—standing as an assignee of the four enrollees' ERISA rights and in the State's capacity as *parens patriae*. The suit named the same defendant—PHS—along with Anthem Blue Cross and Blue Shield of Connecticut, Anthem Health Plans, Inc., and five additional defendants (the "*Anthem*" litigation). The district court stayed all proceedings in *Anthem* pending the Second Circuit's resolution of the *PHS* appeal, on grounds that *PHS* involved identical issues. But while the *PHS* appeal was still pending—and over the State of Connecticut's opposition—the Judicial Panel on Multidistrict Litigation transferred *Anthem* to the United States District Court for the

Southern District of Florida for coordinated pre-trial management in the pending multi-district litigation captioned *In re Managed Care Litigation*, No. 00-1334-MD (S.D. Fla. filed April 17, 2000).

Following the Second Circuit's decision and this Court's denial of certiorari in *PHS*, the *Anthem* defendants moved to dismiss the lawsuit for lack of standing. The Florida district court granted the motion. Connecticut appealed to the Eleventh Circuit.

The Eleventh Circuit affirmed. Noting that the State had "asserted the same bases for standing in th[e *PHS*] lawsuit as in the present one," the court of appeals "concur[red] with the reasoning of the Second Circuit in *Connecticut* v. *Physicians Health Services of Connecticut*" and "adopt[ed] its reasoning" as its own. Pet. App. 3, 4.

Connecticut has now filed a petition for writ of certiorari asserting the same questions and making the same arguments as in the earlier petition with respect to the Second Circuit case. In fact, the "reasons for granting the writ" sections of both petitions are very nearly identical. *Compare* 2002 Pet. 9-14 with 2004 Pet. 5-10; *also compare* 2002 Pet. 6-9 with 2004 Pet. 10-14.

Nothing has changed since the last petition. No court has decided an "important question of federal law" in a way that "conflicts with relevant decisions of this Court" or of the courts of appeal. S. Ct. Rule 10. To the contrary, each of the four federal courts to have addressed petitioner's claims has faithfully applied this Court's precedents to the facts. *See id.* ("A petition for writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law."). Neither the Eleventh nor the Second Circuit's decisions precipitated a conflict with this Court's case law or that of any other court. The petition, like Connecticut's first, should be denied.

REASONS FOR DENYING THE WRIT

The primary reason to deny the writ is that this Court has already declined to hear petitioner's claims, and petitioner has offered no reason why this Court should reach a different conclusion this time around. The Court correctly denied the earlier petition and should deny this one because the Second and Eleventh Circuits properly applied two settled principles of law. First, when a putative assignment confers on the assignee no rights or benefits giving rise to a cognizable "injury," the assignee lacks standing to sue. Second, Congress explicitly defined the parties who may bring an action under ERISA § 502(a)(3), and that list does not include a state suing in its *parens patriae* capacity.

I. THERE IS NO CONFLICT IN THE LAW OF ASSIGNEE STANDING.

No federal action can proceed if the plaintiff lacks constitutional standing, which requires, among other things, that the plaintiff "have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotations and citations omitted). Because the purported assignments did not confer any "injury in fact," settled law required dismissal of all claims brought in the Attorney General's capacity as an assignee.

1. The Eleventh Circuit, like the Second Circuit, straightforwardly applied established law and found that Connecticut's Attorney General could not sue to enforce ERISA as an assignee of plan enrollees' interests, because—as the Attorney General candidly admitted—no benefit would flow to the State as assignee by virtue of the suit, but only to plan beneficiaries.

Under certain circumstances, an injured person may assign the right to sue to another. But in order to possess Article III standing to "assert the injury in fact suffered by the as-

signor," *Vermont Agency of Natural Res.*, 529 U.S. at 773, the assignee must itself have "a 'concrete private interest in the outcome of [the] suit.' " *Id.* at 772 (quoting *Lujan*, 504 U.S. at 573). That is, the assignee must either suffer an injury itself, or it must stand to receive the benefits produced by the relief demanded in the lawsuit. The State possesses neither here.

Connecticut cites a number of cases addressing "assignee standing" under ERISA to support its contention that it possesses Article III standing to sue as an assignee of plan beneficiaries' claims for equitable relief. 2004 Pet. 7 n.3; *see* 2002 Pet. 11 n.2 (same footnote). Each of the cases the State cites, however, involved an assignee who had suffered injury itself and thus stood to receive the benefit from a successful ERISA action—usually a medical provider seeking payment for services rendered.

In sharp contrast, the State here seeks to benefit *only* the assignors. *See* 2004 Pet. 7-10 (conceding that the State itself suffered no injury in fact). The State therefore does not have a sufficient interest in the claims it asserts to satisfy Article III's standing requirements. *See* Pet. App. 5 ("Connecticut, in its capacity as assignee, has failed to allege an actual or imminent invasion of a legally protected interest that is 'concrete and particularized.' ") (citation omitted); *PHS*, 287 F.3d at 119 (holding that "the State as purported assignee of the right to seek equitable relief for the assignors' alleged injury lacks Article III standing because it does not, through that assignment, possess the requisite interest that is or is threatened to be injured by PHS's conduct").

2. Both the Second and Eleventh Circuits correctly rejected the State's attempts to strengthen its meritless claim of assignee standing by conflating *parens patriae* principles and the law relating to assignments. *See* Pet. App. 7 n.3 (noting attempt to "bootstrap" assignee standing with *parens patriae* claim); *PHS*, 287 F.3d at 118 n.11 ("[W]hen suing in its

capacity as assignee, the State cannot rely on its *parens patriae* interest in the health and well-being of its citizens.").

Connecticut nonetheless attempts again to conflate these two distinct areas of law in its petition. 2004 Pet. 6; *see* 2002 Pet. 10 (making identical argument). The first premise of its argument is the enduring rule of *Alfred L. Snapp & Son* v. *Puerto Rico*, 458 U.S. 592, 607-608 (1982), which provides that for a state to sue in *parens patriae*, it must (among other things) "articulate an interest *apart* from the interests of particular private parties." *Id.* at 607 (emphasis added). Connecticut's second premise is that particular private parties have assigned their particular interests to the Attorney General. Therefore, Connecticut concludes, the State may sue *in parens patriae* as an *assignee*. But an ERISA plan enrollee cannot assign to the State any right to sue in *parens patriae*—no citizen possesses that right. To sue as an assignee, the State had to sue on the rights received by assignment. And as both the Second and Eleventh Circuits correctly concluded, the State lacked Article III standing to sue as an assignee. The application of such a settled principle of law to conceded facts does not merit this Court's attention.

II. THERE IS NO CONFLICT IN THE LAW OF STATUTORY STANDING UNDER ERISA.

This Court repeatedly has held that Congress in ERISA articulated with great specificity the parties permitted to bring suit to enforce its provisions. States, with narrow exceptions not implicated here, are not among them. Connecticut therefore has no right to sue in *parens patriae* under ERISA. There is no conflict in the courts over this principle.

1. This Court recently observed that ERISA's civil action provisions are "relatively straightforward." *Aetna Health Inc.* v. *Davila*, 124 S. Ct. 2488, 2496 (2004) (affirming ERISA preemption of state law causes of action). Section 502(a)(3) of ERISA states that *only* a plan participant,

beneficiary, or fiduciary may bring a civil action to enforce ERISA rights. *See Harris Trust & Sav. Bank* v. *Salomon Smith Barney, Inc.*, 530 U.S. 238, 247 (2000) (Section 502(a)(3) limits "the universe of *plaintiffs* who may bring certain civil actions") (emphasis in original); *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 27 (1983) ("ERISA carefully enumerates the parties entitled to seek relief under [Section 502(a)(3)]; it does not provide anyone other than participants, beneficiaries or fiduciaries with an express cause of action.").

The State of Connecticut is not suing to enforce its rights as a plan participant, beneficiary, or fiduciary. Both the Second and Eleventh Circuits therefore found that the State did not possess statutory standing to sue under ERISA. Pet. App. 7 ("Nothing in this statutory provision suggests that a state may bring lawsuits on behalf of its citizens to enforce ERISA. In fact, the plain language of the statute supports the conclusion that Congress had no such intention."); *PHS*, 287 F.3d at 120 ("Whether or not the State has *parens patriae* standing under Article III, we conclude that it lacks statutory standing under ERISA's § 1132(a)(3)."). The law is completely consistent on this point.

2. Connecticut contends that Congress must expressly state its intention to foreclose a state from suing in its *parens patriae* capacity to enforce a federal statute. *See* 2004 Pet. 10-13; 2002 Pet. 6-9 (making identical argument). But this Court explained in *Hawaii* v. *Standard Oil Co.*, 405 U.S. at 260-266, that a state seeking to enforce a federal statute as *parens patriae* must demonstrate that Congress clearly intended the state to be able to sue in that capacity. *See* Pet. App. 6 (citing *Standard Oil*); *PHS*, 287 F.3d at 120 (citing *Standard Oil*). Connecticut does not so much as acknowledge *Standard Oil* in either this petition or its previous one.

III. THE ATTORNEY GENERAL LACKS STATE AUTHORITY TO SUE.

Not only is federal law uniform on the issues presented in the State's petition; the Attorney General has acted outside the bounds of his authority in bringing this action at all. The Supreme Court of Connecticut has instructed that the Attorney General of Connecticut may only sue on behalf of the State when a specific statute authorizes him to do so. *Blumenthal* v. *Barnes*, 261 Conn. 434, 463, 804 A.2d 152, 170 (2002). No Connecticut statute authorizes the Attorney General to sue in *parens patriae* under ERISA. *Compare* Conn. Gen. Stat. § 3-129c (authorizing Attorney General to sue in *parens patriae* on behalf of Connecticut citizens with respect to New York City commuter tax).

* * *

In sum, Connecticut's petition presents for review a case in which there is no conflict among the lower courts; the decision below expressly adopted an earlier decision on which this Court declined to grant certiorari; and the Attorney General's own state has not authorized him to bring this suit. The petition is a singularly unattractive candidate for certiorari.

CONCLUSION

For the foregoing reasons, the petition should be denied.

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